

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

ERIC AARON LYLES

Defendant

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Crim. No.: PJM 03-0484

MEMORANDUM OPINION

Defendant Eric Aaron Lyles has filed a Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c) [Paper No. 301], in which he requests a reduction in his sentence pursuant to the adoption of Amendment 706 to the Sentencing Guidelines, in which the Sentencing Commission lowered the base offense levels for certain crack cocaine offenses. As Lyles' motion concedes, he was found to be a career offender under § 4B1.1 of the Guidelines; nevertheless, he asserts that his sentence was "based on" § 2D1.1, which outlines the base offense levels—as modified by Amendment 706—for crimes involving drugs and narco-terrorism, and that he is therefore eligible for a sentence reduction. However, numerous courts have considered this very issue and have uniformly resolved it against the position taken in Lyles' Motion. Accordingly, the Motion will be **DENIED**.

I.

Section 3582(c)(2) of Title 18 provides:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is

consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2).

In *United States v. Plater*, No. PJM 97-0408, 2008 U.S. Dist. LEXIS 48191, at *4 (D. Md. June 24, 2008), this member of the Court noted that “such a reduction is not authorized under § 3582(c)(2) if ‘the amendment does not have the effect of lowering the defendant’s applicable guideline range because of the operation of another guideline or statutory provision.’ U.S.S.G. § 1B1.10 comment (n.1(A)(ii)) (Supp. to 2007 Guidelines Manual).” The Court ultimately held:

As a career offender, the guideline range applicable to Plater was prescribed by Section 4B1.1 rather than Section 2D1.1, i.e., the guideline for the ‘crack’ offense, with the result that Amendment 706 does not have the effect of lowering the applicable guideline range. The Fourth Circuit has firmly agreed with this analysis, holding in similar cases that while the ‘base offense level corresponding to the determined drug quantity would be lower as a result of Amendment 706, the amendment is ultimately of no consequence because calculation of [defendant’s] base offense level was driven by the career offender designation.’ *United States v. Bronson*, 267 F. App’x 272, 275 (4th Cir. 2008); *see also United States v. Gray*, 271 F. App’x 304, 306 (4th Cir. 2008).

Plater, 2008 U.S. Dist. LEXIS 48191, at *6. The Fourth Circuit upheld the *Plater* decision, albeit in an unpublished opinion. *See United States v. Plater*, 322 F. App’x 353 (4th Cir. 2009).

Since *Plater*, numerous other circuits have held that Amendment 706 offers no relief to defendants sentenced as career offenders. *See, e.g., United States v. Wesson*, 583 F.3d 728, 731 (9th Cir. 2009); *United States v. Perdue*, 572 F.3d 288, 291-93 (6th Cir. 2009); *United States v. Martinez*, 572 F.3d 82, 84-85 (2d Cir. 2009) (per curiam); *United States v. Mateo*, 560 F.3d 152, 154-56 (3d Cir. 2009); *United States v. Forman*, 553 F.3d 585, 589-90 (7th Cir. 2009) (per curiam); *United States v. Caraballo*, 552 F.3d 6, 9-12 (1st Cir. 2008); *United States v. Sharkey*,

543 F.3d 1236, 1238-39 (10th Cir. 2008); *United States v. Tingle*, 524 F.3d 839, 839-40 (8th Cir. 2008) (per curiam).

II.

For the foregoing reasons, Lyles' Motion will be **DENIED**.

A separate Order will **ISSUE**.

December 13 , 2010

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE